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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
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Paper No. 12  
TJQ

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re **Experience Music Project**

Serial No. 75/651,572

Nancy V. Stephens of Foster Pepper & Shefelman for  
applicant.

Brett Tolpin, Trademark Examining Attorney, Law Office 107  
(Thomas Lamone, Managing Attorney).

Before Seeherman, Quinn and Hohein, Administrative  
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Experience Music Project, a Washington State nonprofit corporation, to register the mark EXPERIENCE MUSIC PROJECT for "museum exhibition services; entertainment services, namely live music concerts and live musical performances; educational services, namely conducting classes in the fields of music, art and culture; production of musical programs; providing facilities for mobile live performances and live concerts;

recording studio services for others; concert and concert promotion services; audio recording and production services; community services, namely organizing and promoting events, presentations, programs, courses, conferences, mobile exhibits, workshops and performances related to education and music, production of films and videos related to education and music."<sup>1</sup>

The Trademark Examining Attorney has made final the requirement to disclaim the words "Music Project" because, according to the Examining Attorney, they are merely descriptive when used in connection with applicant's services.

When the requirement was made final, applicant appealed. Applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

The Examining Attorney maintains that the words "Music Project" are merely descriptive under Section 2(e)(1) of the Trademark Act and that, therefore, they must be disclaimed apart from the mark. According to the Examining Attorney, the words are merely descriptive because they describe "significant features of the applicant's [services], i.e., their nature and subject matter is

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<sup>1</sup> Application Serial No. 75/651,572, filed March 2, 1999, based on an allegation of an intention to use the mark in commerce.

'MUSIC' coupled with a 'PROJECT.'" (brief, p. 4) The Examining Attorney is not persuaded by the fact that several previously issued registrations owned by applicant for the mark EXPERIENCE MUSIC PROJECT do not include disclaimers of the words "Music Project." In support of the requirement, the Examining Attorney submitted a dictionary definition of the word "project," and excerpts retrieved from the NEXIS database which show, according to the Examining Attorney, that the words "music project" are frequently used together to describe a particular type of service in the music industry.

Applicant, although offering to disclaim the word "music," argues that the disclaimer sought by the Examining Attorney is not warranted. Applicant contends that the words "music project" are just suggestive. In this connection, applicant points to the issuance of several registrations to it with no disclaimer or with a disclaimer of the word "music" only. Applicant also has relied on third-party registrations that issued without disclaimers of the word "project."<sup>2</sup> Applicant has submitted portions of

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<sup>2</sup> In the cases of its previously issued registrations and the third-party registrations, applicant merely listed them in its request for reconsideration. Generally, a list is insufficient to make such registrations of record. In re Duofold Inc., 184 USPQ 638, 640 (TTAB 1974). In the present case, however, the Examining Attorney considered the registrations as if properly made of record, although he deemed them "irrelevant."

its Web page, and NEXIS articles about its museum. In its reply brief, applicant has proffered a "proposal for compromise" whereby applicant would delete from its recitation of services the following: "live music concerts, live musical performances, production of musical programs, audio recording and production services and organizing and promoting performances related to music."

It is well settled that a term is considered to be merely descriptive of services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes a quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature of them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the services for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

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Accordingly, we have considered the registrations to be of record for purposes of deciding this appeal.

So as to better understand the nature of applicant's services, reference is made to applicant's Web page indicating that EXPERIENCE MUSIC PROJECT is the name of an "interactive museum devoted to creativity and innovation in American popular music" which is located in Seattle, Washington. The museum is the idea of Paul Allen (a co-founder of Microsoft Corporation) and is described as "combining traditional exhibits with interactive, multimedia presentations and hands-on technology to tell the stories of various music genres, and show a selection of [applicant's] diverse collection of more than 80,000 artifacts...offering visitors everything from a traditional museum browsing experience, to hands-on interactive exhibits, to a one-of-a-kind immersive ride-like experience."

The dictionary listing defines the word "project" as "a plan or proposal; a scheme; an undertaking requiring concerted effort; an extensive task undertaken by a student or group of students to apply, illustrate, or supplement classroom lessons." *The American Heritage Dictionary of the English Language* (3d ed. 1992).

The NEXIS evidence consists of 10 articles which, according to the Examining Attorney, are representative of the 366 articles identified by a search of "music project."

Of the 10 articles, however, 6 are from foreign publications and 1 is from a wire service. Because there is no indication that they ever appeared in publications in the United States, however, the articles from foreign publications and the wire service article do not show public exposure to the usage of "music project." See: In re Urbano, 51 USPQ2d 1776, 1778 at n. 3 (TTAB 1999); and In re Men's International Professional Tennis Council, 1 USPQ2d 1917 (TTAB 1986). The three domestic publications show the following uses: "she may continue working on various music projects;" "rap fans who frown on his pop leanings and non-music projects;" and "a major film/book/music project on Latino life in the USA."

We agree with applicant that the words "Music Project" are only suggestive when used in connection with the majority of applicant's museum-related services. We share the Examining Attorney's view, however, that the words are merely descriptive when used in connection with the following services: "educational services, namely conducting classes in the fields of music, art and culture," "production of musical programs," and "audio recording and production services."

As noted above, the word "project" is defined as "an undertaking requiring concerted effort; an extensive task

undertaken by a student or group of students to apply, illustrate, or supplement classroom lessons." We find that the music educational services, music production services, and audio recording and production services all involve "music projects," that is, undertakings or extensive projects in the music field. As such, the words are merely descriptive and must be disclaimed.

In reaching this result, we have considered the third-party registrations of marks wherein there is no disclaimer of the word "Project." While uniform treatment under the Trademark Act is an administrative goal, our task in this appeal is to determine, based on the record before us, whether *applicant's mark* is merely descriptive. As often noted by the Board, each case must be decided on its own merits. We are not privy to the records in the files of the cited registrations and, moreover, the determination of registrability of particular marks by the Trademark Examining Groups cannot control the result in another case involving a different mark for different goods and/or services. In *re Nett Designs Inc.*, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's application], the PTO's allowance of such prior registrations does not bind the Board or this court."].

The same treatment applies to applicant's ownership of several registrations and an abandoned application of the same mark. In saying this, we note that none of applicant's registrations includes a disclaimer of "Project," and, in point of fact, some of the registrations do not include any disclaimer. Yet others of the registrations include a disclaimer of "Music" only. However, applicant's registrations cover services different from the ones involved herein. Most especially, it is noted that the "problem" services in the present application do not appear in any of the recitations of services in applicant's registrations.

Decision: The requirement to disclaim the words "Music Project" is affirmed.

Applicant may, if it wishes, submit a disclaimer of the words "Music Project" apart from the mark. Alternatively, applicant may amend the recitation of services to delete the services "educational services, namely conducting classes in the fields of music, art and culture," "production of musical programs," and "audio recording and production services," and submit a disclaimer of the word "Music" only. Should applicant elect either of these options within thirty days of the mailing date

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hereof, the present decision will be set aside and the application will be forwarded for publication of the mark.